IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

APPEAL NO.971 OF 1997
IN
WRIT PETITION NO.448 OF 1995

Kanak Industries, a proprietary concern, having its office situated at C/o. Crompton Greaves Godown, Mathuradas Mill Compound, N.M. Joshi Marg, Lower Parel, Bombay-400 013. ... Appellant.

Vs.

1. General Labour Union (Red Flag), a trade Union, registered under the Trade Unions Act, 1926, having registered office situated at Sion Bandra Link Road, Kala Killa, Dharavi, Bombay-400 017.

-2. Shri B. S. Bhadange, Industrial Tribunal, having his Court situated at 7th Floor, Arun Chambers, Tardeo, Bombay-400 034. ...Respondents.

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Shri J. P. Cama, Senior Advocate i/b. Mr. K.P. Anil Kumar for the appellant.
Shri N.M. Ganguli for respondent No.1.

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CORAM : R. M. S.KHANDEPARKAR &
DR.D.Y.CHANDRACHUD, JJ.

February 21, 2007.

JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.) :

The scope of the Appeal :

The appeal before the Court arises out of a judgment of a Learned Single Judge dated 22nd July 1997. A reference was made to adjudication before the Industrial Tribunal under Section 10 of the Industrial Disputes Act, 1947. The reference was on the question as to whether a lockout declared by the management of the First Respondent with effect from 26th May 1983 was legal and justified. The Industrial Tribunal held by an award dated 12th August 1994 that the question as to the legality of the lockout had already been decided on 5th May 1983 in a judgment of the Industrial Court in a complaint of unfair labour practices under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. ("MRTU & PULP Act, 1971") The Tribunal held that once the issue as regards the legality of the lockout has been decided finally by a competent Court, the lockout having been held to be legal, the same issue could not be raised again in a reference under Section 10. The Tribunal thereupon considered the justifiability of the lockout and on reviewing the

evidence on record held that the lockout was justified. In a petition filed by the Union under Article 226 of the Constitution, the Learned Single Judge held that a finding on the legality of the lockout in a complaint under the MRTU & PULP Act, 1971, was only for the purposes of proceedings under that Act and this will not preclude the Industrial Tribunal from entering into the legality of the lockout when a reference was made under Section 10 of the Industrial Disputes Act, 1947. The Learned Single Judge, therefore held that a remand of the proceedings was warranted before the Tribunal for a fresh consideration on merits of the question as to whether the lockout was legal. On the justifiability of the lockout, the Learned Single Judge held that the award of the Tribunal was not satisfactory and the reasons furnished by the Tribunal were vague. The award of the Tribunal has been quashed and set aside and an order of remand has been passed for reconsideration of the question of legality as well as of the justifiability of the lockout on merits.

2. The submission urged on behalf of the employer in appeal is that the judgment of the Learned Single Judge overlooks the provisions of Section 59 of the MRTU & PULP Act, 1971. The

contention before the Court is that once a proceeding is instituted by the Union under the Act, on a complaint of unfair labour practices where the legality of the lockout was squarely placed in issue, then by virtue of the provisions of Section 59, no proceedings can be entertained by any authority in respect of that matter under the Industrial Disputes Act, 1947.

3. In order to appreciate the submission, a reference to Section 59 would be in order. The provision is to the following effect:

> "59. Bar of proceedings under Bombay or Central Act:- If any proceeding in respect of any matter falling within the purview of this act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or as the case may be, the Bombay Act, then no proceedings shall at any time be entertained by the Industrial or Labour Court under this Act."

4. Primarily, therefore, the appeal raises the issue of the interpretation which must be placed on the provisions of Section 59. Thirty five years after the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, was

enacted, it is only to be expected that the interpretation of the statutory provisions is not, as it were, on a clean slate bereft of precedent. Precedent does not preclude the Court from approaching the task of interpretation as a matter of first principle. Equally, guided as we are by the discipline of the law, we must follow binding precedent in so far as judicial pronouncement have interpreted Section 59. Among the judgments, we have the decisions of the Division Benches in **Industrial Tubes Manufacturing Company Ltd. vs. S.R. Samant**;[1] **Maharashtra State Road Transport Corporation vs. Yadao**;[2] **Consolidated Pneumatic Tool Co. (I) Ltd. vs. R. A. Gadekar**;[3] and **Association of Engineering Workers vs. V.K. Date**.[4] A Full Bench has also considered the question in **C.S. Dixit vs. Bajaj Tempo Ltd.**[5]

Submissions of the parties :

5. On behalf of the employer the submissions are to the following effect:

(i) Section 59 emphasises the need for election as to which overlapping statute the litigating party would seek to proceed

1 1980 Mh. L.J. 713
2 1985 LAB. I.C. 1012
3 1986 I CLR 322
4 2006 I CLR 318
5 2000 II CLR 719

under – the MRTU & PULP Act, 1971, on one hand, or the Industrial Disputes Act, 1947 on the other; (ii) Once an election is made, a party can still withdraw before any further steps are taken; (iii) However where an application is moved and an order is passed, the proceedings go beyond a mere institution and must be treated as having been entertained; (iv) From the second stage onwards Section 59 will come into operation; (v) An exception has been carved out by the Full Bench where on the ground of limitation, a complaint of unfair labour practices under the MRTU & PULP Act, 1971 cannot proceed beyond the threshold. Limitation brings the complainant back to the threshold and wipes out everything in between; (vi) The other exception is where by an amendment, a subsequent event is sought to be introduced which in substance gives rise to a new cause of action. If the amendment to a pleading is denied that would warrant the filing of a fresh complaint or a reference to adjudication to that limited extent; (vii) Civil law principles must govern the interpretation of Section 59 which in substance are the guiding principles of interpretation that have been adopted by the judgments of the Division Benches and of the Full Bench; (viii) The interpretation suggested by the Union would render the employer in the case of

the lockout or the Union in the case of a strike liable to defend its conduct in two different proceedings merely because the complainant chooses one out of two readily available remedies and then fails. Besides having been deprecated by the Full Bench such a course would be opposed to public policy which frowns upon a multiplicity of proceedings. This would also be deeply prejudicial to the defence of a party who having successfully defended the lockout or strike is once again required to defend the action in a different Court possibly after several years. The consequence of losing in the case of a lockout may possibly give rise to a liability to pay back wages and in the case of strike a recognised Union is liable to lose its recognition. The principles of justice, equity and good conscience do not permit a party which has elected to proceed before a Court of limited jurisdiction to commence a new litigation on the same conduct of the defendant merely because it has failed in the Court of its first choice.

6. The submissions of the Union are as follows:

-(i) The interpretation that a declaration under the MRTU & PULP Act, 1971 that a strike/lockout is illegal holds good in a

proceeding under the Industrial Disputes Act, 1947 will be fallacious; (ii) A strike/lockout may be declared as illegal under the MRTU & PULP Act, 1971 for want of notice, under clauses (a) of Sub-Section (1) or (2) as the case may be of Section 24 of the Act. There is no provision in Section 24 of the Industrial Disputes Act, 1947 of giving any notice before commencing a strike/lockout; (iii) In that case the strike/lockout commenced without notice cannot be held to be illegal under the Industrial Disputes Act, 1947; (iv) The provisions of Section 25 of the MRTU & PULP Act, 1971, of Section 24 of the Industrial Disputes Act, 1947 and other relevant provisions of the two Acts have been rightly considered by the Learned Single Judge in the judgment under Appeal. The view taken by the Division Bench in para 13 in the case of Industrial Tubes (1980 Mah. L.J. 713) is correct and justified. The two Acts viz., Industrial Disputes Act, 1947 and MRTU & PULP Act, 1971 have to be read independently for their application; (v) There was a reference made by the State Government on 17-3-1983 under Section 10(1) of the Industrial Disputes Act, 1947 regarding the demand of the Respondent Union for reinstatement of a large number of workmen who were terminated from service between April 1982 and October 1982. The lockout related to the said

reference and, therefore, the same is hit by Section 23(b) of the Industrial Disputes Act, 1947 and is consequently illegal under Section 24(1)(a) of the said Act. The lockout is even otherwise illegal under Section 24(1)(a) of the Industrial Disputes Act, 1947; and (vi) As held by the Hon'ble Supreme Court of India in the case of **Syndicate Bank Vs. Umesh Nayak,**[6] an illegal lockout is per se unjustified without requiring any other reasons for the unjustifiability. The lockout is even otherwise unjustified.

Section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 :

7. Section 59 of the MRTU & PULP Act, 1971 consists of two parts. In the first part the section imposes a bar on any authority entertaining proceedings under the Central Act (the Industrial Disputes Act, 1947) or the Bombay Act (The Bombay Industrial Relations Act, 1946). The bar arises where any proceedings in respect of any matter falling within the purview of the MRTU & PULP Act, 1971 are instituted under the Act. In that case, no proceedings can be entertained at any time by any authority in respect of that matter under the Central Act or the

6 1994-II LLJ 836

Bombay Act. In the second part of the Section, the prohibition is on a proceeding being entertained by the Industrial or the Labour Court under the MRTU & PULP Act, 1971. That prohibition applies where any proceeding in respect of a matter within the purview of the MRTU & PULP Act, 1971 is instituted under the Central Act or the Bombay Act.

8. By the first part of Section 59, the interpretation of which would determine the outcome of the present case, the following ingredients have to be fulfilled before an authority under the Industrial Disputes Act, 1947 or the Bombay Industrial Relations Act, 1946 is precluded from entertaining a proceeding: (i) A proceeding must be instituted under the MRTU & PULP Act, 1971; and (ii) The proceeding must be in respect of any matter falling within the purview of the Act of 1971. In such an eventuality no proceedings can be entertained "in respect of that matter" by an authority under the Central Act and the Bombay Act. As a matter of first principle, the subject matter of the proceedings under the MRTU & PULP Act, 1971 has to be in respect of a matter which falls within the purview of that Act. Obviously, where the proceeding that is instituted relates to a matter which cannot be

comprehended within the purview of the MRTU & PULP Act, 1971, the bar would not be attracted. The words “proceeding in respect of any matter” adverts to the subject matter of the proceedings and, it is the subject matter of the proceedings which must fall within the scope and purview of the MRTU & PULP Act, 1971.

9. The MRTU & PULP Act, 1971, has received the assent of the President. In interpreting the provisions of Section 59, the Court must effectuate the object of the Legislature in enacting the provisions and a purposive interpretation must be adopted in order to ensure that the object is not rendered nugatory. The plain language of the provision indicates that the Legislature had within its contemplation the serious consequences that would ensue if a multiplicity of proceedings were adopted by a litigating party on the same subject matter particularly in a field as sensitive as industrial relations. If one of the parties to an industrial dispute chooses a forum prescribed by the MRTU & PULP Act, 1971 for ventilating its grievance on a matter falling within the purview of that Act, the policy of the Legislature is clearly to preclude an authority under the Central Act or the Bombay Act from entertaining a proceeding in respect of the very same matter. The expression “any matter”

and the words “in respect of that matter” clearly evince an intention of the Legislature to ensure that a multiplicity of the proceedings should not be adopted with respect to the same matter, once a duly constituted proceeding has been instituted under the Act of 1971. The Legislature had, within its contemplation, the serious hardship that may be occasioned both to the workman on the one hand, and to the employer on the other if litigating parties were to be permitted to approach different fora under various pieces of industrial legislation in respect of the same subject matter. The policy of the law is based on a sound rationale and the underlying logic is that there must be repose in litigation.

10. However, while defining the ambit of Section 59, it would become necessary for the Court to have regard to the object of the MRTU & PULP Act, 1971, the scope of its provisions and the canvass of the challenge that is contemplated in the MRTU & PULP Act, 1971. The bar to proceedings under the Central Act must be confined to the extent to which the legislature has enacted such a mandate. Absent a clear mandate or one which follows by necessary implication, the Court will not presume an ouster of jurisdiction on an *ipse dixit*. The role of the Court is to interpret a

legislative provision and implement the object which underlies it. The Court will not legislate by creating new grounds.

Precedents on the subject :

11. The parameters of Section 59 came up for decision before a Division Bench of this Court in **Shri Shivaji Agricultural College vs. Mukhtyar Ahmed.**[7] A complaint under Section 28 of the MRTU & PULP Act, 1971 filed by an employee of a college whose services were terminated by the management, was dismissed on the ground of limitation. Upon a reference thereafter made to adjudication under the Industrial Disputes Act, 1947, the order of termination was set aside. A Division Bench of this Court, in a challenge by the management accepted the plea that the reference was barred by Section 59 of the MRTU & PULP Act, 1971. This Court held thus :

> "True it is, as argued by .. counsel for Mukhtyar Ahmed, that the earlier decision under the Act of 1971 is not on merits, but that seems to make no difference in the applicability of section 59. Use of the word "instituted" is significant specially when it is contrasted with the use of the word "entertained" in that very section. In India, institution means presentation of the mater. That is the first stage, second being its entertaining, the third being the trial and the fourth being the decision. In the instant case, even the fourth stage was over. If bar operates

7 1987 Mh. L.J.646

> even if the first stage is reached, it is difficult to see how it will cease to operate only because at the last final stage, the matter is decided only on limitation. It is wrong to assume that section 59 is based only on the principles of res judicata. Legislative policy seems to restrict the choice of remedy and forum. The Act of 1971 on the one hand and the ID Act and the BIR Act on the other have many overlapping provisions and hence legislature mandated to choose at the very threshold any one of the remedies for such overlapping matters. Once a choice is made and the matter is presented, the other remedy is lost and proceedings under the other set of Acts cannot be "entertained"."

In **Consolidated Pneumatic Tool Co.(I) Ltd. vs. R.A. Gadekar**,[8] on a complaint of unfair labour practices the management raised the plea that the complaint was barred by Section 59 inasmuch as when the complaint was pending, conciliation proceedings had already been initiated under the Industrial Disputes Act, 1947. Subsequently, references were made under the Industrial Disputes Act, 1947 covering 57 employees whereas the complaint of unfair labour practices related to 53 employees. Upon the references being made, the Union withdrew the complaint since the references related to the dismissal of the workers. The management then contended that the references were not maintainable, an objection which the Industrial Tribunal overruled. In a petition by the

8 1986 I CLR 322

management, the Division Bench was of the view that no general rule applicable to all cases could be laid down on the amplitude of Section 59 and to some extent, the outcome must depend upon the facts of each case. The Court noted that when the Union had initially filed a complaint, the objection of the management was that conciliation proceedings were already pending under the Industrial Disputes Act, 1947 attracting the bar of Section 59. When the complaints were withdrawn upon references being made, the management sought to challenge the maintainability of the references on the ground that the complaints had been withdrawn. The Court held that the management was estopped from its conduct in doing so. The Division Bench considered the ambit of the expression “institute” in Section 59 and declined to accept the broad proposition urged on behalf of the employer that the Industrial Tribunal would lose jurisdiction to entertain the references under the Central Act, the moment proceedings in respect of the same were instituted under the MRTU & PULP Act, 1971. In that context, the Court held as follows:

> “The word “institute” as used under Section 59 can be taken as meaning “setting on foot an enquiry” which means something more than mere filing of complaint.

> Where the applicant does nothing more than filing a complaint under the Act, and withdraws it before any effective steps are taken, then in our view the provisions of Section 59 of the MRTU & PULP Act will not apply. Obviously as to what could be termed as effective steps will again depend upon the facts and circumstances of the case."

The principle enunciated by the Division Bench, therefore, is that where a complainant had done nothing more than to file a complaint under the MRTU & PULP Act, 1971 which is withdrawn before any effective steps are taken, it could not then be said that proceedings were instituted under that Act. This, the Court held, was the interpretation necessary to avoid "palpable injustice and absurd inconvenience". The Court held that the complaint was withdrawn in view of the references under the Central Act and with the consent of the management after which an objection under Section 59 was raised to the maintainability of the references. The Court held that the references were not barred under Section 59.

12. In **Maharashtra State Road Transport Corporation vs. Yadao**,[9] the Appellant had initiated proceedings under Section 33

9 1985 LAB. I.C. 1012

(2)(b) of the Industrial Disputes Act, 1947 seeking approval to the action of dismissal against certain employees. Approval not having been granted, the management had filed a petition before the Court under Article 226 of the Constitution. The employee moved a complaint under the MRTU & PULP Act, 1971 complaining of an unfair labour practice which was allowed and an order of reinstatement was passed. The decision of the Labour Court was challenged by the management. In another batch of cases, approval was granted under Section 33(1) and the complaint filed under Section 28 of the MRTU & PULP Act, 1971 was allowed. The preliminary objection raised by the management was that the complaint under Section 28 was barred inasmuch as proceedings had been initiated under Section 33 of the Industrial Disputes Act, 1947. The Division Bench adverted to the object underlying Section 59 in the following observation:

> "We find that the philosophy behind the bar of S.59 of the ULP Act is akin to that of S. 10 or S.11 of the Civil Procedure Code which enjoins upon a court not to proceed with trials of suits where similar issues were also directly and substantially in issue in another suit. The intention is to prevent the multiplicity of proceedings, possibility of contradictory verdicts and wastage of judicial time."

The Division Bench held that Section 33 placed restrictions on the common law power of the employer to hire and fire at will and where an industrial dispute was pending, the Legislature had introduced a requirement of approval. The Court was of the view that proceedings under Section 33 were not of a judicial nature and that the complaint under the MRTU & PULP Act, 1971 was accordingly not barred.

13. A Full Bench of this Court came to be constituted in **C. S. Dixit vs. Bajaj Tempo Limited**,[10] to consider the conflict between the views expressed by the Division Benches in **Yadao's** case (supra) on the one hand, and in **Shivaji Agricultural College** on the other. In **Yadao's** case, the Division Bench had noted that the underlying rationale of Section 59 was akin to Sections 10 and 11 of the Code of Civil Procedure, 1908 which enjoined upon the Court not to proceed with the trial of a suit where similar issues were directly and substantially in issue in an earlier suit. The intention of the Legislature was to prevent a multiplicity of proceedings, the possibility of contradictory verdicts and waste of judicial time. On the other hand, the view in **Shivaji Agricultural**

10 (2000) II CLR 719

College (supra) was that Section 59 was not based only on the principle of *res judicata* and the legislative policy was to restrict the choice of remedy and forum. Once the choice was made and matter was presented, the other remedy was held to have been lost. The Full Bench noted the view in **Consolidated Pneumatic** (supra) where the expression "institute" under Section 59 was construed to mean, the setting on foot of an enquiry. In the case before the Full Bench, an application was filed for amendment of a complaint under the MRTU & PULP Act, 1971. The application for amendment was dismissed, upon which a reference was made to adjudication under the Industrial Disputes Act, 1947. The Full Bench held that in such a case, mere institution of the complaint would not operate to bar a subsequent reference. Factually, when the initial complaint of unfair labour practices was instituted, a disciplinary enquiry was pending and the complaint was in relation to the pending enquiry and other related matters. During the pendency of the proceedings before the Industrial Court, the employees against whom enquiries were held, were dismissed. A challenge to the dismissal was sought to be raised by an amendment to the pending complaint. That application for amendment was dismissed. Thereupon a reference to adjudication

was made under the Industrial Disputes Act, 1947. The Full Bench held that "from the angle of civil law and principles of cause of action", the complaint under the MRTU & PULP Act, 1971 and the reference to adjudication under the Industrial Disputes Act, 1947 dealt with separate matters. The former related to a pending enquiry while the latter related to the subsequent development of a dismissal of the workmen.

14. The judgment of the Full Bench enunciated the object of Section 59 thus:

> "... the provision of Section 59 is based on the salutary principle of compelling a party to stick to the remedy that he had taken recourse to."

The Full Bench while explaining the parameters of Section 59 held that the bar contained therein will not be attracted in certain cases. Firstly, when the remedy of a complaint of unfair labour practices itself is barred, it cannot be said that the litigant has taken recourse to the very remedy which is barred. Secondly, if on account of subsequent developments, a new cause of action arises, the provisions of Section 59 would not bar a litigant from

bringing a subsequent proceeding on the basis of a new cause of action. Thirdly, where a statute of limitation is pleaded in defence to the remedy adopted by the litigant and the plea of limitation is allowed, the dismissal of an earlier complaint of unfair labour practices under the MRTU & PULP Act, 1971 will not operate to bar the maintainability of a reference under the Industrial Disputes Act, 1947:

> "However, if the statute of limitation is pleaded, everything will be wiped out, and the petitioner, who is hit by the statute of limitation, shall have to be treated as a person being refused the entry even though the point as to limitation may have been decided at the end of trial."

Fourthly, where a complaint under the MRTU & PULP Act, 1971 is withdrawn before any effective steps are taken by the Court, the bar under Section 59 would not operate. What would constitute effective steps would depend on the facts and circumstances of each case and no principle of general application can be laid down. The Full Bench, therefore, held that the judgment in **Shivaji Agricultural College** (supra) did not lay down the correct principle of law in so far as it held that the mere filing of a complaint of unfair labour practice would operate to bar a subsequent reference even though the complaint was decided only on the point of

limitation.

15. Finally, it would be appropriate to make a reference to a decision of a Division Bench in **Association of Engineering workers vs. V.K. Date**. That was a case where the management had declared a lockout. The Union raised a demand for lifting the lockout and filed an application under Section 25(2) of the MRTU & PULP Act, 1971 seeking relief. The lockout was subsequently lifted by the employer. The Union sought an intervention of the Deputy Commissioner of Labour under the Industrial Disputes Act, 1947. The Competent Authority declined to do so in view of the complaint of unfair labour practices having regard to the provisions of Section 59. The Division Bench held that the Union had initiated a proceeding under Section 25(2) of the MRTU & PULP Act, 1971 and that would operate to bar proceedings under the Industrial Disputes Act, 1947. The Court rejected the submission that proceedings contemplated under Section 59 were only a complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. A reference under Section 25(2) would not stand excluded from the expression “proceedings” as used in Section 59. One of the

submissions of the Union was that the justifiability of a lockout was not and could not form the subject matter of a reference under Section 25(2) of the MRTU & PULP Act, 1971 and the bar under Section 59 was, therefore, not attracted. The Division Bench held as follows:

> "The object of S.59 is to prohibit duplicating the proceedings in respect of the matter which falls within the purview of MRTU & PULP Act. Though, in the demand, the Union used the expression, "unjustified lockout", yet it appears that it was loosely used for illegal lockout. This is apparent from the fact that prayer made in the writ petition is that direction be issued to the Assistant Commissioner of Labour (Conciliation Officer) to initiate conciliation proceedings with regard to the demand raised by the Union for lifting of *illegal lockout* (emphasis supplied by us). The declaration of lockout illegal or otherwise on the Reference made by the Union is a matter within the purview of MRTU & PULP Act and during the pendency of that Reference, Section 59 bars initiation of proceedings under Industrial Disputes Act. In the circumstances, the Assistant Commissioner of Labour cannot be said to have erred in declining to intervene in the matter because of the pendency of the proceedings before the 6th Labour Court under MRTU & PULP Act." (emphasis supplied).

The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 : Provisions to regulate

strikes and lockouts.

Objects.

16. The Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 as its long title indicates is an Act "to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute Courts (as independent machinery) for carrying out the purposes of according recognition to trade unions for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid". (emphasis supplied). The Government of Maharashtra, as the Preamble to the Act would show, had appointed a Committee on unfair labour practices for defining certain acts of employers and workers and their organizations which should be treated as unfair labour practices and for suggesting action which should be taken against those engaging in such practices. The Act came to be enacted by the

State Legislature upon the report of the Committee. In the decision of the Supreme Court in **Sarva Shramik Sangh vs. Indian Smelting & Refining Co. Ltd.,**[11] which arose out of the provisions of this Act, the report of the Committee on unfair labour practices was considered as legitimate background material, providing evidence of historical facts, surrounding circumstances or of the mischief that was sought to be remedied by the statute. Considering the report as a legitimate external aid to construction of the Act, the Supreme Court observed thus:

> "The report of the Committee on unfair labour practices which preceded the Maharashtra Act, while noticing the fact that the expression "unfair labour practices" was being used in all fields and areas connected with industrial relations in a wider sense and loosely worded manner and not always to mean certain activities connected with collective bargaining, sought to enumerate the types of such practices as were illustrated during course of enquiries by the employees and their organizations, unions and also individual workers or groups of individual workers and specifically states that "after a careful scrutiny, we have selected only a few of them because we are of the view that the net of unfair labour practices should not be cast too wide". As the preamble to the Maharashtra Act would recite, the State Legislature after taking into consideration the report of the Committee, thought fit to decide among other things, to define and provide for the prevention of certain unfair labour practices and to constitute courts for carrying out the purposes of according recognition to trade unions and for enforcing in that context the provisions relating to unfair practices. The fact that there were in existence

11 (2003) 10 SCC 455

> and force, at that point of time several related laws such as the ID Act, Contract Labour Act, Bombay Industrial Relations Act etc. and the provisions of the Maharashtra Act were not to be in derogation of those laws cannot also be overlooked in trying to understand and interpret the provisions in question, ..." (emphasis supplied).

The Legislative Scheme :

Chapter III of the Act provides for the recognition of Trade Unions. Chapter IV provides for obligations and rights of recognised Unions, other Unions and certain employees. Chapter V deals with illegal strikes and lockouts. The expression "illegal strike" is defined in Sub-section (1) of Section 24, while the expression "illegal lockout" is defined in Sub-section (2) of Section 24. An illegal strike is defined as follows :

> "(1) "illegal strike" means a strike which is commenced or continued -
>
> (a) without giving to the employer notice of strike in the prescribed form, or within fourteen days of the giving of such notice;
>
> (b) where there is a recognised union, without obtaining the vote of the majority of the members of the union, in favour of the strike before the notice of the strike is given;
>
> (c) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of matters covered by the notice of strike;

(d) where submission in respect of any of the mattes covered by the notice of strike is registered under Section 66 of the Bombay Act, before such submission, is lawfully revoked;

(e) where an industrial dispute in respect of any of the matters covered by the notice of strike has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under Sub-section (6) of Section 58or section 71 of the Bombay Act, during the arbitration proceedings or before the date on which the arbitration proceedings are completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(f) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of strike;

(g) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court under Sections 72,73 or 73-A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of strike;

(h) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by notice of strike;

Provided that, nothing in clauses (g) and (h)

shall apply to any strike, where the union has offered in writing to submit the industrial dispute to arbitration under Sub-section (6) of Section 58 of the Bombay Act or Section 10-A of the Central Act, and

(i) the employer does not accept the offer; or

(ii) the employer accepts the offer but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act,

and thereafter, the dispute has been referred for arbitration of the Industrial Court under Section 73-A of the Bombay Act, or where the Central Act applies, while disagreeing on the choice of the arbitrator, the employer does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf, and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act; or

(i) during any period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award;"

An illegal lockout is defined as follows :

"(2) "**illegal lock-out**" means a lock-out which is commenced or continued-

(a) without giving to the employees, a notice of lock-out in the prescribed form or within fourteen days of the giving of such notice;

(b) during the pendency of conciliation proceeding under the Bombay Act or the Central Act and seven days after the conclusion of such proceeding in respect of any of the matters covered by the notice of lock-out;

(c) during the period when a submission in respect of any of the matters covered by the notice of lock-out is registered under section 66 of the Bombay Act, before such submission is lawfully revoked;

(d) where an industrial dispute in respect of matter covered by the notice of lock-out has been referred to the arbitration of a Labour Court or the Industrial Court voluntarily under Sub-section (6) of Section 58 or Section 71 of the Bombay Act, during the arbitration proceeding or before the date on which the arbitration proceeding is completed or the date on which the award of the arbitrator comes into operation, whichever is later;

(e) during the pendency of arbitration proceedings before an arbitrator under the Central Act and before the date on which the arbitration proceedings are concluded, if such proceedings are in respect of any of the matters covered by the notice of lock-out;

(f) in cases where an industrial dispute has been referred to the arbitration of a Labour Court or the Industrial Court compulsorily under Sections 72, 73 or 73-A of the Bombay Act, during such arbitration proceedings or before the date on which the proceeding is completed, or the date on which the award of the Court comes into operation, whichever is later, if such proceedings are in respect of any of the matters covered by the notice of lock-out; or

(g) in cases where an industrial dispute has been referred to the adjudication of the Industrial Tribunal or Labour Court under the Central Act, during the pendency of such proceeding before such authority and before the conclusion of such proceeding, if such proceeding is in respect of any of the matters covered by the notice of lock-out:

Provided that, nothing in clauses (f) and (g) shall apply to any lock-out where the employer has

offered in writing to submit the industrial dispute to arbitration under Sub-section (6) of Section 58 of the Bombay Act, or section 10-A of the Central Act; and

(i) the union does not accept the offer;

(ii) the union accepts the offer, but disagreeing on the choice of the arbitrator, does not agree to submit the dispute to arbitration without naming an arbitrator as provided in the Bombay Act,

and thereafter, the dispute has been referred for arbitration of the Industrial Court under Section 73-A of the Bombay Act; or where the Central Act applies, while disagreeing on the choice of the arbitrator the union does not agree to submit the dispute to arbitration of the arbitrator recommended by the State Government in this behalf and thereafter, the dispute has been referred for adjudication of the Industrial Tribunal or the Labour Court, as the case may be, under the Central Act;

(h) during the period in which any settlement or award is in operation, in respect of any of the matters covered by the settlement or award."

17. Section 25 provides for a reference to the Labour Court for a declaration of whether the strike or lockout is illegal. Under Sub-section (1) of Section 25, a reference can be made by the State Government or the employer for seeking a declaration when a strike is proposed or is commenced by the employees of the Undertaking. Similarly, under Sub-section (2) of Section 25, a

reference to the Labour Court can be made for seeking a declaration that the lockout which has been proposed or commenced is illegal. The reference can be made by the State Government, by a recognised Union, or whether there is no such Union by any of the Unions of employees of the undertaking. Sub-section (3) of Section 25 requires that a declaration has to be made only in the open Court. Sub-sections (4) and (5) then provide as follows :

> "(4) The declaration made under this section, shall be recognised as binding, and shall be followed in all proceedings under this Act.
>
> (5) Where any strike or lock-out declared to be illegal under this section is withdrawn within forty-eight hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act." (emphasis supplied).

Three facets emerge from sub-sections (3), (4) and (5). First, the statute contemplates in the first instance a declaration in the open Court of whether a strike, or as the case may be, a lockout is illegal. Second, the declaration is to be recognised as binding and has to be followed in all proceedings under the Act. Third, if within forty-eight hours of the issuance of the declaration of illegality, the strike or lockout is withdrawn, it shall not for the purposes of the

Act be deemed to be illegal under the Act. The State legislature has mandated that the effect of the declaration ensues for proceedings under the Act. Similarly, when a strike or lockout is withdrawn within 48 hours of the declaration, then it is not deemed illegal for the purposes of the Act.

18. The Act makes provisions for dealing with unfair labour practices in Chapter VI. Section 28 lays down the procedure for dealing with complaints relating to unfair labour practices. The powers of Courts are embodied in Chapter VII of the Act. Under Sub-section (1) of Section 30, the Court is empowered to issue a declaration of the commission of an unfair labour practice; to issue a cease and desist order; and to direct that affirmative action be taken (including the payment of compensation or reinstatement of an employee); and to direct that the recognition of a Union be cancelled or its rights be suspended where it is a recognised Union that has indulged in an unfair labour practice. The unfair labour practices under the Act are defined in Schedules II, III and IV – Schedule II defines those on the part of employers, Schedule III those on the part of Trade Unions and Schedule IV the general unfair labour practices on the part of employers. Under Item (6) of

Schedule II, the unfair labour practice is defined as follows:

> "Proposing or continuing a lock-out deemed to be illegal under this Act." (emphasis supplied).

Similarly, it may be noted that a corresponding provision is made in Item (1) of Schedule III where an unfair labour practice is defined to "advice or actively support or instigate any strike deemed to be illegal under the Act". The reference to deemed illegality under item (6) of Schedule II and item (1) of Schedule III has to be read in the context of Sub-section (5) of Section 25. For, the concept of deemed illegality is introduced by a legal fiction incorporated by the Legislature in Sub-section (5) of Section 25. Where a strike, or as the case may be, a lockout is withdrawn within forty-eight hours of the declaration of illegality, it shall not for the purposes of the Act be deemed to be illegal under the Act.

Section 59 :

19. Section 59 of the Act to which we have already made a detailed reference contains inter alia a prohibition on the entertainment of proceedings under the Industrial Disputes Act, 1947 if any proceedings in respect of a matter falling under the

purview of the MRTU & PULP Act, 1971 is instituted. The prohibition, it must be noted, is on the entertainment of proceedings “in respect of that matter”. The expression “that matter” refers to the matter with respect to which a proceeding is instituted under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The bar obviously would not be attracted where the subject matter of the proceedings does not fall within the purview of the MRTU & PULP Act, 1971. It is only where the subject matter of the proceedings can be comprehended by the Labour Court, or as the case may be, the Industrial Court under the MRTU & PULP Act, 1971 and are instituted under that Act, that the bar would come into operation against the entertainment of a proceeding with respect to that matter under the Central Act or the Bombay Act. Three pre-conditions have to be fulfilled: the first is that there has to be a proceeding under the MRTU & PULP Act, 1971. The second is that the proceeding has to be on any matter falling within the purview of the Act. Thirdly, the bar is on instituting proceedings in respect of that matter under the Bombay Act or Central Act. In other words, the bar would not be attracted where the proceedings under the Central Act or the Bombay Act are not in respect of the

same matter as the proceeding under the MRTU & PULP Act, 1971. If the proceeding under the Bombay Act or Central Act deals with a separate subject matter, the bar is not applicable.

20. In this judgment, we have also elaborated on the judicial interpretation of the expression “instituted”. The decisions of this Court hold that a proceeding would not be regarded as being instituted where it was withdrawn before any effective steps were taken. The judgment of the Full Bench also rules that where proceedings under the MRTU & PULP Act, 1971 were held to be barred by limitation and were shut out at the very threshold, the bar would not apply. Moreover, the Full Bench also held that where a new cause of action has arisen that would not bar the institution of a fresh proceeding under the Central Act on a reference to adjudication. A new cause of action would strictly speaking not incorporate the bar of Section 59 because the earlier proceedings cannot then be regarded as being in respect of “that matter”. The fresh proceeding being on a fresh cause of action is not in respect of that matter which related to the earlier proceeding but a new matter.

Precedents on the subject :

21. In the context of a proceeding under the MRTU & PULP Act, 1971, it is now necessary to advert to some of the decisions of this Court on the subject. In **Industrial Tubes Manufacturing Company Ltd. vs. S.R. Samant**,[12] the workmen proceeded on an illegal strike upon which the employer filed a complaint of unfair labour practices with reference to Schedule III of the MRTU & PULP Act, 1971. In the meantime, the employer instituted a reference under Section 25 for a declaration that the strike was illegal. The Labour Court issued a declaration of illegality upon which the Union immediately informed the Court that the workmen were being advised to withdraw the strike. On the next day the workmen reported for duty, but the employer declined to allow the workmen to join duty unless they executed a bond accepting their willingness to terminate the strike, resume duties and to continue to give normal output and observe normal conditions. The workmen refused to give the bond, upon which the employer refused work. The Union thereafter, filed a complaint of unfair labour practices under Items (1) and (6) of Schedule II contending that the action of the employer calling for the execution of a bond amounted to a

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lockout. The Industrial Court in an application for interim relief held that the Union had made out a prima facie case of a lockout and directed the employer to allow the workmen to resume their duties.

22. The Division Bench held that the strike was illegal under the Industrial Disputes Act, 1947 inasmuch as Section 23(3) prohibits employees from going on strike during the operation of any settlement. The strike was also illegal under Section 24(1)(a) and 24(1)(i) of the MRTU & PULP Act, 1971 since it was commenced without fourteen days' notice and during the operation of the settlement. The Court then dealt with the consequence of a withdrawal of the strike with reference to the provisions of Section 25(5) of the MRTU & PULP Act, 1971. Under Section 25(5) the strike shall not “for the purposes of the Act” be deemed to be illegal “under this Act” where it is withdrawn within forty-eight hours of the declaration of illegality. The Division Bench held that the withdrawal of the strike would obliterate the illegality created by breach of Section 24(1) of the MRTU & PULP Act, 1971 but did not wipe out the illegality created by Section 24 of the Industrial Disputes Act, 1947:

> The concluding words “under this Act” and preceding words “for the purpose of this Act” only go to emphasise that, it is the illegality created by the breach of section 24 (1) of this Act, and not the one created by or under any other Act, that is contemplated to be wiped out under section 25(5) of the Act on withdrawal of the strike. Such withdrawal of the strike cannot wipe out the illegality created by section 24 of the Industrial Disputes Act. The fact that the act or omission covered by section 24(1)(i) of this Act and section 23(c) of the Industrial Disputes Act, happens to be same, is, besides the point and makes no difference to the illegality under section 24(1) of the Industrial Disputes Act, it being beyond the scope of section 25 of this Act.”

23. The effect of the deeming fiction created by Section 25 (5) of the MRTU & PULP Act, 1971 is that for the purposes of that Act, the strike would not be regarded as illegal if it is withdrawn within forty-eight hours of the issuance of a declaration by the Labour Court. That however, would not obliterate or affect the illegality with reference to the Industrial Disputes Act, 1947. In **Balmer Lawrie & Co. Ltd. v. Balmer Lawrie Employees' Union,**[13] a settlement was terminated and a charter of demands was served by the workmen on the employer. On a failure of conciliation, the demands were referred to industrial adjudication. A draft settlement was arrived at during the pendency of the reference, the draft being required to be approved by the Bureau of Public

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Enterprises since the company was a Public Sector Undertaking. No approval was issued and an application by the Union for disposing of the reference in terms of the draft was rejected. The Union gave a notice of strike. Some of the demands upon which the strike notice was issued were admitted in conciliation at the instance of the management, upon which the strike notice was modified to delete those demands. The strike thereafter commenced on 18th October 1978 and was in force until May 1979 when a settlement was arrived at. The dispute between the parties on the payment of wages during the period of strike was referred to adjudication on which the award was passed by the Industrial Tribunal. The Union contended in its challenge to an award that the strike was lawful under Section 24 of the MRTU & PULP Act, 1971 and the Tribunal was in error in holding that it was illegal. Mrs. Justice Sujata Manohar (as the Learned Judge then was) noted that under Section 24(1)(a) of the MRTU & PULP Act, 1971, a strike during the pendency of proceedings before the Industrial Court under the Industrial Disputes Act, 1947 would be illegal if such proceeding is in respect of any of the matters covered by the notice of strike. Similarly, under Section 24(1)(c), a strike during the pendency of conciliation proceedings inter alia under the

Industrial Disputes Act, 1947 and seven days after their conclusion would be illegal if the notice of strike was in respect of the dispute which was the subject matter of conciliation. The strike was not illegal under the MRTU & PULP Act, 1971 since the Union had excluded from the strike notice demands which were the subject matter of the pending reference and conciliation proceedings. However, Section 24 of the Industrial Disputes Act, 1947 provided that the strike would be illegal if it is commenced or declared in contravention of Section 22 or Section 23. Under clause (a) of Section 23 of the Industrial Disputes Act, 1947, there is a bar on proceeding on a strike during the pendency of proceedings inter alia before the Industrial Tribunal which did not limit the illegality only to a strike which covered demands that are the subject matter of pending proceedings. Therefore, under the Industrial Disputes Act, 1947 a strike which was called during the pendency of conciliation proceedings or a reference was illegal although it is in respect of the demands which are not covered by conciliation proceedings or a reference. The strike was hence, illegal under Section 24 of the Industrial Disputes Act, 1947 even though it would not be illegal under the MRTU & PULP Act, 1971. Before the Learned Single Judge, however, it was urged that Section 24 of

the MRTU & PULP Act, 1971, would prevail over the provisions of the Industrial Disputes Act, 1947, as a later State Act on a subject falling within the concurrent list, the State Act having received assent of the President. Mrs.Justice Sujata Manohar (as the Learned Judge then was), rejected the submission that the Maharashtra Act would replace the Industrial Disputes Act, 1947 with the following observation:

> "There are however, clear indications in the Maharashtra Act that this Act was not meant to replace the relevant provisions of the Industrial Disputes Act. For example, in various sections of the Maharashtra Act there is a reference to a strike or lockout being illegal "under this Act" - thereby clearly indicating that the provisions relating to legality or otherwise of such strikes or lock-outs under any other law are not affected."

The Court adverted to the provisions of Section 12(6), Section 13 (1)(5), Item (6) of Schedule II and Item (1) of Schedule III to amplify the principle that in several provisions of the Act, the illegality of a strike or lockout is defined with reference to the MRTU & PULP Act, 1971, and that Act alone. Moreover, Sub-section (2) of Section 20 of the MRTU & PULP Act, 1971, specifically provides which provisions of the Industrial Disputes Act, 1947 shall stand amended. Among them, there is no amendment

brought about by Schedule I to the provisions of the Industrial Disputes Act, 1947, in so far as they relate to a strike or a lockout. The Learned Judge then held as follows:

> "Schedule I sets out the amendments to the Industrial Disputes Act. In the absence of such an express provision relating to amendment of sections of the Industrial Disputes Act dealing with illegal strikes and lock outs, it would not be correct to hold that the provisions of the MRTU & PULP Act, in that behalf replace the relevant provisions of the Industrial Disputes Act, 1947.

The Learned Single Judge followed the view that was expressed in **Industrial Tubes** (supra).

The ambit of the strike and lockout provisions in the Central Act and State Act :

A. Legality of a Strike or Lockout.

24. A comparison of the provisions of the Industrial Disputes Act, 1947 with those of the MRTU & PULP Act, 1971, in so far as they govern strikes and lockouts, would be in order. Chapter V of the Industrial Disputes Act, 1947 deals with strikes and lockouts. Sub-section (1) of Section 22 deals with a strike in a public utility service while sub-section (2) thereof deals with a lockout in a public

utility service. Section 23 deals with the general prohibition of a strike and lockout in certain conditions. A strike or lockout is illegal under Sub-section (1) of Section 24 inter alia if it is commenced or declared in contravention of Section 22 or Section 23 of the Act. In the case of a public utility service before the workmen proceed on strike or an employer effects a lockout, certain pre-conditions have to be fulfilled. These are (i) a notice of a strike or, as the case may be, of a lockout within six weeks before striking or effecting a lockout; (ii) within fourteen days of giving such notice; (iii) before the expiry of the date of the strike or, as the case may be, the lockout; and (iv) during the pendency of conciliation proceedings before the Conciliation Officer and seven days after conclusion of such proceedings. In Section 23 which applies to other industrial establishments, the prohibition on a strike or a lockout operates: (i) during the pendency of conciliation proceedings and seven days after the conclusion thereof; (ii) during the pendency of proceedings before the Labour Court or the Tribunal and two months thereafter; (iii) during the pendency of arbitration proceedings and two months after the conclusion thereof, where a notification is issued under Section 10A(3A); and (vi) during any period in which a settlement or award is in operation

in respect of any of the matters covered by the settlement or award.

25. The regulatory provisions of the Industrial Disputes Act, 1947 deal with public utility services separately from other industrial establishments. In public utility services the Act imposes the requirement of a notice and prescribes a stipulated period between the date of the notice and the commencement of action. There is also a prohibition on resorting to a strike or lockout during the pendency of any conciliation proceedings before a Conciliation Officer and for a period of seven days of their conclusion. In respect of undertakings other than public utility services, Section 23 does not incorporate a requirement of a notice or a cool – off period between the date of the notice and the commencement of action. The prohibition there on a strike or a lockout is during the pendency of proceedings in conciliation, adjudication or arbitration and for a certain stipulated period upon conclusion thereof. Finally, there is a prohibition on a strike or lockout during the period during which a settlement or award is in operation in respect of a matter covered by the settlement or award.

26. In contrast, the MRTU & PULP Act, 1971, both in its definition of “illegal strike” and “illegal lockout” incorporates a requirement of a notice in the prescribed form and of a period of fourteen days of the furnishing of such notice. Several grounds of illegality which are envisaged in Sub-sections (1) and (2) of Section 24 of the MRTU & PULP Act, 1971, are either absent in Sections 22 and 23 of the Industrial Disputes Act, 1947 or the requirement is subject to conditions that are not found in the Industrial Disputes Act, 1947. What is illegal under the Industrial Disputes Act, 1947 in the context of a strike or a lockout is not necessary illegal with reference to the corresponding provision of the MRTU & PULP Act, 1971. Contrariwise, what is not illegal under the MRTU & PULP Act, 1971, may well constitute an illegal strike or lockout under the Industrial Disputes Act, 1947. In this category, the provisions of the MRTU & PULP Act, 1971, prescribe that during the pendency of conciliation proceedings, arbitration proceedings or adjudication proceedings a strike or, as the case may be, lockout would be illegal in respect of matters covered by a notice of strike or lockout. This is apparent from clauses (c), (f), (g) and (h) of Sub-section (1) of Section 24 and clauses (d), (e) and (g) of Sub-section (2). On the other hand, under the Industrial

Disputes Act, 1947, there is a blanket prohibition on resorting to a strike or lockout during the pendency of conciliation proceedings, proceedings in adjudication before a Labour Court or Tribunal, and during the pendency of arbitration proceedings which is not qualified by the requirement that the proceedings be in respect of a matter covered by a notice of strike or lockout. Section 22(1)(d) and Section 22(2)(d) of the Industrial Disputes Act, 1947 preclude a strike or, as the case may be, a lock out during the pendency of conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The prohibition on the other hand under Section 24(1)(c) of the MRTU & PULP Act, 1971, and Section 24(2)(d) during the pendency of conciliation proceedings applies “in respect of any of the matters covered by the notice” of strike or lockout.

27. This comparison would show that the requirements, in order that a strike or, as the case may be, a lockout should not be illegal have different connotations in the Industrial Disputes Act, 1947 on the one hand, and the MRTU & PULP Act, 1971, on the other. Moreover, even when a strike or a lockout is illegal both under the Industrial Disputes Act, 1947 and the MRTU & PULP

Act, 1971, the effect of the illegality under the latter Act can be obliterated upon the withdrawal of the action within forty eight hours of the declaration. However, Section 25(5) of the MRTU & PULP Act, 1971, makes it clear that the strike would then be deemed not to be illegal for the purposes of that act. The effect of an illegality under the Central Act is not obliterated by the provision for withdrawal under the State Act. Both the initial declaration under the State Act and the deeming fiction by which the illegality ceases to subsist are only for the purposes of the State Act.

28. The Supreme Court considered the scope and ambit of the provisions of the MRTU & PULP Act, 1971 in **Sarva Shramik Sangh** (supra). This decision was preceded by the judgments in **General Labour Union v. Ahmedabad Mfg. and Calico Printing Co. Ltd.**,[14] **Vivith Kamgar Sabha v. Kalyani Steels Ltd.**[15] and **Cipla Ltd. v. Maharashtra General Kamgar Union.**[16] The principle which was laid down in the earlier cases was that the provisions of the MRTU & PULP Act, 1971 can be enforced only by persons who are admittedly workmen and if there is a dispute as to whether the

14 1995 Supp (1) SCC 175
15 (2001) 2 SCC 381
16 (2001) 3 SCC 101

workmen in question are employees of the management, that dispute must be resolved by raising an industrial dispute before the appropriate forum. Unless it is undisputed or indisputable that the relationship of employer and employee exists between the parties, the question as to whether there is an unfair labour practice cannot be enquired into at all. The provisions of the Act are summary in nature and where the relationship of employment is disputed, that issue would have to be settled by industrial adjudication. Subsequently, in **Sarva Shramik Sangh**, it was sought to be contended by the Union that the provisions of Section 59 of the MRTU & PULP Act, 1971 were not noticed in the **Cipla** judgment. Rejecting that contention, the Supreme Court held that a complaint in which the relief sought is a declaration of status as a direct employee of the principal employer and for claiming the benefit of the conditions of service applicable to directly employed workmen of the principal employer, is not a matter which falls within the purview of the Maharashtra Act. Hence, Section 59 would have no application. Undoubtedly, the decision in **Sarva Shramik Sangh** dealt with the issue as to whether contract workmen who claim the status of direct employees of the principal employer can sustain a complaint of unfair labour practices under

the MRTU & PULP Act, 1971. However, the judgment of the Supreme Court is of significance in that it construes the ambit and scope of the provisions of the Act, vis-a-vis the Industrial Disputes Act, 1947. The Supreme Court held that while on the one hand, the State Act intends to deal only with certain unfair labour practices, the Industrial Disputes Act, 1947 has a wider ambit:

> "I.D. Act is undisputably a comprehensive statute which provides for investigation and settlement of industrial disputes" (para 16, page 467).

The Supreme Court observed that there are other legislations which govern the field of industrial relations including the Industrial Disputes Act, 1947, the Contract Labour Act, the Bombay Industrial Relations Act, 1946 etc. and the provisions of the MRTU & PULP Act, 1971 were not to be in derogation of those laws. (para 18, page 469).

B. The Question of Justifiability.

29. Now, it is a settled principle of law that in a complaint under the MRTU & PULP Act, 1971, the justification for a strike or lockout cannot be considered by the Industrial Court. The issue of justification is not a matter which falls within the purview of the

State Act and necessitates an adjudication in a substantive reference under Section 10 of the Industrial Disputes Act, 1947. In **Modistone Ltd. v. Modistone Employees' Union**,[17] a Division Bench of this Court, upon considering the judgments of the Supreme Court as well as of this Court held that the justifiability of the reasons underlying a strike or lockout has to be considered in the course of industrial adjudication on a reference under Section 10 of the Industrial Disputes Act, 1947. The Industrial Adjudicator can while adjudicating upon the reference consider the adequacy or sufficiency of reasons among various other factors, including the conduct of the parties. The question as to the apportionment of blame may also arise in determining whether the workmen are entitled to wages during the period in question. The judgment of the Division Bench in **Modistone** is hence an authority for the proposition that in a complaint of unfair labour practices under the MRTU & PULP Act, 1971, the Industrial Court can decide whether the lockout is legal - in accordance with the provisions of the Act – or whether the reasons in the notice of lockout are completely sham. The Court, however, cannot investigate into the sufficiency of the reasons or the justifiability of the lockout in a complaint of

17 2001 I CLR 1009

unfair labour practices. The propositions that have been enunciated by the Division Bench are thus:

> "In the result, we hold that while deciding a complaint under the provisions of the MRTU & PULP Act, the Industrial Court :
>
> -(a) Can decide whether the lock-out is legal or illegal i.e. whether it is in accordance with the provisions of the MRTU & PULP Act, 1971:
>
> (b) can decide whether the reasons stated in the notice or lockout are non existent or sham or irrelevant i.e. not germane to the employer-employee relationship or not relating to the industrial relationship;
>
> (c) However, it cannot go into the question of sufficiency or adequacy of the reasons;
>
> (d) the Industrial Court cannot go into the question whether the lockout is justified. This question can only be agitated before the appropriate Court under the provisions of the Industrial Disputes Act, 1947."

The settled position in law, therefore, is that the question as to the justifiability of a strike or, as the case may be, a lockout lies outside the jurisdiction of the Industrial Court in a complaint of unfair labour practices under the MRTU & PULP Act, 1971.

Harmonious Construction.

30. In considering the submission on the applicability of

Section 59, the provisions of the statute must be construed harmoniously. The legislative scheme that has been enacted by the Legislature in terms of the substantive provisions must be considered from a holistic prospective. The Court must impart a purposive interpretation to the legislation, one that would effectuate the object of the legislation. The object of the legislation in carving out certain unfair labour practices for legislative regulation cannot be ignored. Neither for that matter can the Court ignore the circumstance that the provisions of the MRTU & PULP Act, 1971 are summary in nature, something which is emphasised by the Supreme Court in the decision in **Cipla** and now reiterated in **Sarva Shramik Sangh**. The provisions of Section 59 must be harmoniously construed together with the substantive provisions of the Act in drawing the balance between the effect of a declaration under Section 25 on the one hand upon a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. Due weight must be given to the fact that the legislature has indicated in no unmistakeable terms that the declaration made under Section 25 is to be recognised as binding and has to be followed in all proceedings under the Act. Similarly, when a strike or lockout is withdrawn within a period of forty eight hours of the

declaration it shall not for the purposes of the Act be deemed to be illegal under the Act. This has to be juxtaposed with the very concept of deemed illegality which is a legislative fiction created for the purposes of the MRTU & PULP Act, 1971. This judgment has already explored the substantive divergence in the concept of the illegality of a strike or lockout for the purposes of the MRTU & PULP Act, 1971 on the one hand and the Industrial Disputes Act, 1947 on the other. The legislature while enacting the provisions of the State Act specifically mandated that the declaration of illegality under the MRTU & PULP Act, 1971 shall be for the purposes of that Act. The State Legislature was cognisant of the prevalence of other industrial legislation on the subject and did not intend to derogate from legislation, both the Central and State, which holds the field. The limited extent to which the Industrial Disputes Act, 1947 has been modified is specified in Schedule I of the Act. It has to be emphasized by the provisions for strike or, as the case may be, a lockout in the Central Act have not been modified. Both having regard to the object of the MRTU & PULP Act, 1971 and its legislative provisions, it cannot be held that a finding on the question of illegality under that Act will conclude, before the Industrial Adjudicator in a reference under Section 10 of

the Industrial Disputes Act, 1947, the question whether a strike or a lockout, as the case may be, is illegal under the Central Act. Moreover, inasmuch as the Industrial Court in a complaint of unfair labour practices under the MRTU & PULP Act, 1971 has no jurisdiction to consider the question of justification, clearly the Industrial Adjudicator in a reference under Section 10 of the Industrial Disputes Act, 1947, would not be barred in considering the issue as to whether a strike or a lockout is justified.

The Award of the Industrial Tribunal:

31. The Industrial Tribunal by its award dated 12th August 1994 declined to enquire into the legality of the lockout only on the ground that in a complaint of unfair labour practices instituted by the Union, the Industrial Court had come to the conclusion that the lockout effected by the management in pursuance of its notice dated 5th May 1983 was legal. The observations of the Tribunal are to the following effect:

> "At the outset it is required to be stated that immediately after the lockout was declared by the Company, the Red flag Union filed a Complaint bearing Complaint (ULP) No. 297 of 1987 before the Industrial Court, Bombay and challenged the legality of the lockout. The Industrial Court, Bombay decided the above complaint and held and declared that the lockout effected by the Company

> under its notice dated 5-5-83 is legal. When the issue in respect of legality of lockout is already decided finally by the competent court. I am of the opinion that it is not necessary to decide the same issue again by this Court. Hence in the present reference, relying on the judgment passed in Complaint (ULP) No. 297 of 1987, I come to the conclusion that the lockout declared by the Company is legal."

On behalf of the Union, it is submitted that the reference had been made by the Government under Section 10 of the Industrial Disputes Act, 1947 for adjudication, following the termination of the services of 130 workmen and that under Section 24, a lockout during the pendency of the adjudication proceedings was illegal. The Tribunal was of the view that in the reference the only point that remained for adjudication was in relation to the justifiability of the lockout. The Tribunal has, therefore, proceeded on the basis that the issue of legality was concluded upon the decision in Complaint (ULP) No.297 of 1983.

32. During the course of these proceedings, the record and proceedings of Complaint (ULP) No.297 of 1983 have been called for and we have had the benefit of perusing the judgment of the Industrial Court dated 7th February 1984 in that complaint. The complaint of unfair labour practices before the Industrial Court

arose under Item 6 of Schedule II of the MRTU & PULP Act, 1971 under which proposing or continuing a lockout deemed to be illegal under the Act constitutes an unfair labour practice. The question before the Industrial Court in those proceedings was in relation to the concept of deemed illegality which, as we have noted earlier, is relevant only for the purposes of MRTU & PULP Act, 1971. The Industrial Court held that the lockout which commenced with effect from 6th May 1983, immediately upon a notice of lockout dated 5th May 1983, was illegal at its inception because under Section 24(2)(a) of the MRTU & PULP Act, 1971, a notice of fourteen days was required to be given. Such a notice, the Industrial Court held, was not furnished. The Industrial Court held that upon the expiry of the period of fourteen days, however, the lockout ceased to be illegal. Now, in so far as the requirement of a notice is concerned, it is apparent that while the MRTU & PULP Act, 1971 imposes such a requirement under Section 24(2)(a), a prior notice is not mandated under the Industrial Disputes Act, 1947, in an undertaking which is not a public utility service. The second ground upon which the lockout was contended to be illegal was that a reference was pending before the Industrial Tribunal in respect of a demand for reinstatement of 130 employees (Reference IT 165 of 1982). The

Industrial Court held that the subject matter of the reference was not covered by the notice of lockout given by the management on 5th May 1983. In this regard, it would be necessary to emphasize that under clause (g) of Sub-section (2) of Section 24 of the MRTU & PULP Act, 1971, a lockout during the pendency of the reference in adjudication is illegal “if such proceeding is in respect of any of the matters covered by the notice of lockout”. It was, therefore, that the Industrial Court held, that since the reference to adjudication which was pending was not in respect of a matter covered by the notice of lockout, the lockout was not illegal under the provisions of the MRTU & PULP Act, 1971. Now, in contrast, it would be necessary to note that clause (b) of Section 23 of the Industrial Disputes Act, 1947, contains a prohibition on an employer declaring a lockout during the pendency of proceedings before a Labour Court or Tribunal and two months after the conclusion of such proceedings. The point to be noted, as has been already emphasized earlier, is that the concept of illegality under the Industrial Disputes Act, 1947 is indeed not the same as the concept of illegality under the MRTU & PULP Act, 1971. For the purposes of a complaint of unfair labour practices under the MRTU & PULP Act, 1971, the Industrial Court was called upon to

decide whether within the meaning of Item 6 of Schedule II, the lockout was deemed to be illegal. That obviously could not preclude the Industrial Tribunal from deciding in a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947 as to whether the lockout was illegal under the provisions of that Act. Moreover, in the earlier complaint of unfair labour practices, the propriety or justifiability of the lockout could not even be determined by the Industrial Court in view of the settled position of law. In its judgment of 7th February 1984, the Industrial Court, in fact, declined to go into the question of justifiability holding that the said issue would need to be considered in the reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. In these circumstances, we have absolutely no hesitation in holding that the Learned Single Judge has justifiably interfered with the award of the Industrial Tribunal in the present case which declined to consider the issue of illegality with reference to the provisions of the Industrial Disputes Act, 1947. The Tribunal was duty bound, upon a reference being made under Section 10 of the Industrial Disputes Act, 1947 to consider the issue of legality with reference to the provisions of that Act. The Tribunal having failed to consider the issue, a remand was in the circumstances. clearly

warranted in accordance with law.

33. While holding that a remand was warranted to the Industrial Tribunal to reconsider the issue of legality, the Learned Single Judge has also directed the Tribunal to reconsider the question as regards justifiability of the lockout. In para 14 of the judgment, the Learned Single Judge in fact noted, the submission of both Learned Counsel of the contesting parties that the Union and the management may be permitted to lead further evidence on both the issues in respect of which a remand was being ordered to the Industrial Tribunal.

34. The question as to whether the lockout is justified would arise if the Tribunal upon remand holds that the lockout was legal in the first place. An illegal lockout is per se unjustified and if in a given case, the Tribunal holds that the lockout is illegal, no question then arises of adducing any other reasons in regard to the justification or otherwise for the lockout. In **Syndicate Bank vs. K. Umesh Nayak**,[18] a Constitution Bench of the Supreme Court reiterated the principle that was enunciated in **India General**

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Navigation and Railway v. Their Workmen,[19] that a strike which is found to be illegal cannot at the same time be categorised as justified. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not. The same principle must apply in the case of a lockout. The justification, if any, for a lockout can fall for consideration provided that the lockout is held to be legal. If a lockout is illegal, then in such a case, there is no question of the lockout being regarded as justifiable. In these circumstances, we are of the view that the order of remand by the Learned Single Judge before the Industrial Tribunal to consider the question of legality, as well as of the justifiability of the lockout should be sustained. In order to obviate any expression of opinion by this Court, it would neither be appropriate, nor proper for the Court to express a view on the merits of that question and we clarify that the observations contained in that regard in para 13 of the judgment of the Learned Single Judge shall not preclude the Tribunal from considering the issue as to justifiability afresh. The Industrial Tribunal shall do so on the basis of all the evidence on

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record, including such additional evidence which has been permitted to be led before the Industrial Tribunal in pursuance of the statement made by Counsel for both parties before the Learned Single Judge.

35. In these circumstances, we are of the view that the order of the Learned Single Judge is correct and proper and does not warrant any interference in appeal. The appeal shall accordingly stand dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(R. M. S.KHANDEPARKAR, J.)

(DR.D. Y. CHANDRACHUD, J.)